

IN THE COURT OF APPEALS OF IOWA

No. 3-1125 / 13-1473
Filed January 9, 2014

**IN THE INTEREST OF H.D.,
Minor Child,**

**C.M., Mother,
Appellant.**

Appeal from the Iowa District Court for Webster County, Angela L. Doyle,
District Associate Judge.

A mother appeals from a juvenile court order terminating her parental
rights to a child. **AFFIRMED.**

Marcy Lundberg, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Ricki Osborn, County Attorney, and Jordan W. Brackey,
Assistant County Attorney, for appellee.

Kurt T. Pittner, Fort Dodge, attorney and guardian ad litem for minor child.

Considered by Doyle, P.J., Tabor, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.

Courtney is the mother, and Kyle the father, of H.D., who was born in October 2008 and was four years of age at the time of an early September 2013 termination of parental rights hearing. Courtney appeals from a September 3, 2013 juvenile court order terminating her parental rights to H.D. (The order also terminated the parental rights of Kyle, and he has not appealed.) We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Pursuant to an ex parte temporary removal order of the juvenile court, on May 2, 2012, H.D. was removed from the physical custody of his parents and his maternal grandmother. The removal was based on allegations that H.D. was residing with his maternal grandmother, who had been his primary caretaker for a long time, and who had tested positive for methamphetamine use, and that his parents had been absent from his life for a long time. H.D. was placed in the temporary legal custody of the Iowa Department of Human Services (DHS) and in the physical custody of a foster family. His legal custody has thereafter remained with the DHS and his physical custody has remained with the same foster family.

On May 4, 2012, the State filed a petition alleging H.D. to be a child in need of assistance (CINA). On July 3, 2012, the juvenile court held an adjudicatory hearing combined, by agreement of the parties, with a dispositional hearing. Despite notice of the hearing neither parent had filed any appearance, motion, or answer to the petition. Neither parent attended the hearing. The court found that H.D. had been living with his maternal grandmother at the time of

removal, H.D. had been with her most of his life, and neither parent had paid anything for H.D.'s care and support. The court also found that Courtney had not seen H.D. for at least six months prior to his removal and Kyle had not seen him for an even longer time, Courtney was aware of the hearing, and Courtney had advised the DHS she did not intend to cooperate with the DHS or work toward reunification with H.D.

The juvenile court adjudicated H.D. a CINA pursuant to Iowa Code sections 232.2(6)(a) (2011) (parental abandonment), (c)(2) (child imminently likely to suffer harmful effects as result of failure of parent, guardian, custodian or household member to exercise reasonable care in supervising the child), and (n) (child whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in child not receiving adequate care). The court found that H.D.'s parents had placed him with his maternal grandmother shortly after his birth, that neither parent had provided support in cash or in kind, and that neither parent had maintained any contact or visitation with H.D. or exercised any of the rights, duties, or privileges of a parent-child relationship. Based on the sum of its findings, the court found by clear and convincing evidence that the parents had abandoned H.D., the court waived reasonable efforts toward reunification with the parents, see Iowa Code § 232.102(12)(a) (providing for waiver of reasonable efforts in cases of parental abandonment), and ordered that a permanency plan be prepared and a permanency hearing be scheduled.

In a July 26, 2012 report to the juvenile court the DHS reported that Courtney wished for the DHS to work toward returning H.D. to his maternal grandmother. The DHS recommended that the court order a petition for termination of parental rights be filed so the DHS could continue working on reunification with the grandmother.

The court held a permanency hearing on July 31, 2012. Neither parent attended. The court found that neither parent had made any filing, and that neither parent had had any contact with H.D. for some time. The court ordered the filing of a termination of parental rights petition and authorized concurrent planning.

Courtney has maintained throughout these proceedings that her goal is to have H.D. reunited with his maternal grandmother. In a March 2013 case history the DHS reported it had been urging the grandmother to attend classes necessary to become an approved adoptive home for H.D., but despite multiple opportunities for her to do so she had not begun such classes. In a late April 2013 report the DHS noted that the grandmother had recently reported she had finally started the classes, but it would be ten more months before she would know if she would be an approved foster home.

The State filed a termination petition on April 1, 2013. Kyle did not attend the ensuing termination hearing. Courtney and her attorney attended, as did the maternal grandmother. Courtney presented no evidence, other than by very brief cross-examination of the DHS case manager. The juvenile court found that the process of the grandmother attempting to become an approved adoptive home

could not be completed because the grandmother had failed to complete and return a necessary evaluation form.

The juvenile court terminated Courtney's parental rights pursuant to Iowa Code section 232.116(1)(b) (2013) (abandonment), (e) (child adjudicated CINA, child removed at least six consecutive months, parent has not maintained significant and meaningful contact with child during the previous six consecutive months and has made no reasonable efforts to resume child's care despite being given opportunity to do so), and (f) (child four or older; adjudicated CINA; removed at least twelve of last eighteen months, or last twelve consecutive months with any trial period at home less than thirty days). Courtney appeals.

II. SCOPE AND STANDARDS OF REVIEW.

Our review of a termination of parental rights proceeding is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010), as is our review of CINA cases, *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002). We are not bound by the juvenile court's findings of fact, but we give them weight, especially when considering credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). Grounds for termination of parental rights must be proved by clear and convincing evidence. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). "Clear and convincing evidence' means there are no serious or substantial doubts as to the correctness of conclusions of law drawn from the evidence." *C.B.*, 611 N.W.2d at 492.

III. STATUTORY GROUNDS FOR TERMINATION.

Courtney asserts the State did not prove any of the statutory grounds upon which the juvenile court terminated her parental rights. Although the court relied on three separate statutory provisions to terminate her rights, we need find grounds under only one of those provisions in order to affirm the court if otherwise appropriate. See *In re R.R.K.*, 544 N.W.2d 274, 276 (Iowa Ct. App. 1995). We choose to focus on section 232.116(1)(e).

The first two elements of section 232.116(1)(e), adjudication as a CINA and the period of removal, were clearly proved. Only the third element is arguably subject to any dispute.

Courtney had no contact with H.D. during the six months in question. Family members of Courtney's reported that she had a history of substance abuse, and that her substance abuse was ongoing. From the outset of the CINA proceeding Courtney made it clear she did not wish to be reunited with H.D. and would not participate in offered and available services. The only effort that could arguably be construed as an effort by Courtney to resume H.D.'s care was an inquiry to the DHS, through her attorney, about participating in services. The inquiry came, however, in late July 2013, some fifteen months after commencement of the CINA case, thirteen months after the juvenile's court waiver of reasonable efforts, four months after the commencement of the termination case, and one month before the scheduled termination hearing. We find, as the juvenile court did, that the State proved by clear and convincing evidence the third element of section 232.116(1)(e), that Courtney had not

maintained significant and meaningful contact with H.D. during the previous six consecutive months and had made no reasonable efforts to resume his care despite being given the opportunity to do so.

IV. BEST INTEREST.

Courtney cites and relies on certain provisions of Iowa Code section 232.116(3) in asserting the juvenile court erred in determining that termination of her parental rights is in H.D.'s best interest. The State contends that error was not preserved with respect to whether the cited statutory exceptions to otherwise appropriate termination apply. The State urges that the provisions cited and relied on by Courtney were not raised in or addressed by the juvenile court. Although the State is arguably correct, we choose to address the merits of the issues Courtney raises.

Courtney asserts the juvenile court should have declined to terminate her parental rights based on two provisions of Iowa Code section 232.116(3). The provisions of section 232.116(3) are permissive, not mandatory. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997) (overruled on other grounds by *P.L.*, 778 N.W.2d at 39). The court uses its best judgment in applying the factors contained in that statute. *P.L.*, 778 N.W.2d at 40. "A child's safety and the need for a permanent home are now the primary concerns when determining a child's best interests." *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially). When the statutory grounds for termination of parental rights exist, the needs of a child are generally promoted by termination. *In re L.M.F.*, 490 N.W.2d 66, 68 (Iowa Ct. App. 1992).

Courtney cites and relies on Iowa Code section 232.116(3)(a). It provides that the court “need not terminate the relationship between the parent and child” if “[a] relative has legal custody of a child.” The legal custody of H.D. has been in the DHS since May 2012. There is no evidence H.D. is or has been in the legal custody of his maternal grandmother or of any other relative. Courtney’s reliance on section 232.116(3)(a) is without any merit.

Courtney also cites and relies on Iowa Code section 232.116(3)(c). It provides that the court “need not terminate the relationship between the parent and child” if clear and convincing evidence shows that “termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.” The evidence shows that H.D. has been in the care of, and provided for by, his maternal grandmother from shortly after his birth until his May 2012 removal. It shows that Courtney has provided little if any of his care and support during his lifetime, has had only minimal contact with him, and had little or no contact with him during the fourteen months from his removal to the termination hearing. In short, there is no substantial evidence of any close parent-child relationship and no substantial evidence that termination of Courtney’s parental rights would be harmful to H.D., whom the evidence shows is thriving in the home of his long-term foster parents. Courtney’s reliance on section 232.116(3)(c) is without any merit.

V. CONCLUSION AND DISPOSITION.

We agree with and affirm the juvenile court's detailed and well-reasoned decision, and its order terminating Courtney's parental rights to H.D.

AFFIRMED.